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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,203	12/19/2001	Richard Louis Underhill	KCC-16,198	4876

35844 7590 01/13/2004

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT PAPER NUMBER

3761

DATE MAILED: 01/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/025,203

Applicant(s)

UNDERHILL ET AL.

Examiner

Jacqueline F Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7,8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 11/3/03 have been fully considered but they are not persuasive. Applicant argues Dragoo fails to disclose or suggest varying any aspect of the absorbent articles other than absorbent capacity. Since the diaper can be used alone or with the insert, the recited different sizes are considered to be the multiple inserts with different absorbent capacities and the different absorbent articles with different absorbent capacities.

Applicant argues Dragoo fails to disclose or suggest the conveyance of information to consumers regarding the applicability of each of the garments with respect to one another in view of the child's signals. While Dragoo does not specifically discuss conveying information, it is obvious that the manufacturer would provide information on the package or on an insert (card) that instructs the consumer how to effectively use the product. Additionally, Dragoo teaches treating incontinence by using a diaper having a predetermined absorbent capacity. The size of the child, the stage of toilet training, and the amount of urine absorbed within a given period are all indicators (signals) of the applicability of each of the garments. The examiner contends that it would be obvious for a manufacturer provided packaging information such as 'daytime, overnight, toddler etc.' to consumers that compares the different types of garments in accordance with a child's signals.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-8, 10-17, and 19-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dragoo et al. USPN 6220961.

Regarding claim 1, 3, 8, 12, 21, 22, and 24, Dragoo discloses a package that contains different types of absorbent articles. Dragoo discloses the step of providing a series of at least 3 types of pant-like garments (col. 12, line 54 through col. 13, line 6), each garment type differing from at least one other garment type in at least two ways, such as size and absorbency (col. 12, lines 2-66). Absorbent articles are worn like pants so the limitation of "pant-like" is satisfied by Dragoo. Dragoo does not specifically

disclose conveying information to a consumer describing signals displayed by a child that indicate greater applicability of one type over another. It would have been obvious to one of ordinary skill in the art at the time the invention was made to inform the consumer about what type of absorbent article to use depending on the child and signals displayed by the child so that the consumer would know what type of absorbent article to use. Since the package includes different types of size and absorbent capacities, it is considered obvious to instruct the consumer on what size/capacity is appropriate for different stages of toilet training development so that the article can be used efficiently.

With respect to claims 1, 2, 12, 13, 14, 15, 17, 21, 26, and 27, (a different interpretation from the above rejection of claim 1), Dragoo discloses packaging of different types of absorbent articles. It is well known the art that diapers such as disclosed by Dragoo are sold in many different sizes, such as for premature babies, normal (average) sized babies, older babies (older than 12 months), and toddlers (24 months and beyond). The recited step of providing a series of at least 3 types of absorbent articles is satisfied by the fact that Dragoo provides at least three different absorbent capacities (col. 12, lines 54-66) and it would be obvious for those diapers to also convey three different sizes so the consumer can have a product that fits correctly or alternatively that fits a projected size of the child corresponding with a stage of toilet training. The recited step of conveying information describing signals displayed by a child that indicate greater applicability of one type over another is satisfied by the fact

that it is well known and obvious to one of ordinary skill in the art at the time the invention was made to provide sizing information on packages of absorbent articles so the consumer can purchase the correct size for their child. The size of the child is an indicator as to the size of the absorbent article that is required.

5. With respect to claims 4-6, 16, 23, and 25, Dragoo discloses and recognizes that the absorbency of each absorbent article can be different according the absorbency needs of the individual (col. 12, lines 19-31). Therefore, a specific absorbency range for each article is considered to a result effective variable of the quantity of absorbency needed for a particular use, i.e. overnight, training pant, daywear. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of Dragoo with the claimed absorbency ranges, since discovering an optimum value of a result effective variable involves only routine skill in the art.

With respect to claim 7, the recited 3 different sizes are considered to be the multiple inserts with different absorbent capacities and the different absorbent articles with different absorbent capacities. The disclosure of Dragoo satisfies the claim limitations, col. 12, lines 2-66.

With respect to claims 10, 11, 19, and 20, it is old and well known in the art and obvious to one of ordinary skill in the art at the time the invention was made to provide absorbent articles with wetness indicators so that the caregiver can be alerted when the

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absorbent articles is about to fail to prevent unwanted leakage from the absorbent article, with the choice of what kind of wetness indicator being one of design choice.

6. With respect to claims 28-35, and following the interpretation and statement of rejection set forth in claims 1 and 3, it is well known in the art that diapers, such as disclosed by Dragoo, are sold in many different sizes, such as for premature babies, normal (average) sized babies, older babies (older than 12 months), and toddlers (24 months and beyond). The recited step of providing a series of at least 3 types of absorbent articles is satisfied by the fact that Dragoo provides at least three different absorbent capacities (col. 12, lines 54-66) and it would be obvious for those diapers to also convey three different sizes so the consumer can have a product that fits correctly or alternatively that fits a projected size of the child corresponding with a stage of toilet training. Dragoo discloses and recognizes that the absorbency of each absorbent article can be different according the absorbency needs of the individual (col. 12, lines 19-31). Therefore, a specific absorbency range for each article is considered to a result effective variable of the quantity of absorbency needed for a particular use, i.e. overnight, training pant, daywear. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of Dragoo with the claimed absorbency ranges, since discovering an optimum value of a result effective variable involves only routine skill in the art.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

8. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703)308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3590.

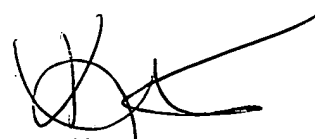
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Jacqueline F Stephens
Examiner
Art Unit 3761



January 11, 2004



KIM M. LEWIS
PRIMARY EXAMINER
AU 3761